IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10774 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMINIBEN DIPAKKUMAR CHAMPANERIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10774 of 2001

MR PARESH UPADHYAY for Petitioner No. 1

Ms. Shraddha Trivedi, AGP for Respondents No. 1-2

MR MUKESH R SHAH for Respondent No. 3 & 4.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/12/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Paresh Upadhyay for the petitioner; Ms. Shraddha Trivedi, the learned AGP

for respondents No. 1 and 2 and Mr. R.N. Shah for M.R. Shah for respondent No. 3-4. By order dated 7.11.2001, notice for final disposal was issued by making it returnable on 4th December, 2001 by directing the respondents to file affidavit in reply on the returnable date. The matter was therefore taken up for final disposal by this Court.

Rule. Service of rule is waived by learned AGP Ms. Shraddha Trivedi for respondents No. 1 and 2 and Mr. Shah for respondent No. 3-4.

Brief facts of the present petition are to the effect that the husband of the petitioner was working as primary teacher in Panchmahal District who died on 23.2.2000. The petitioner is the widow of about 38 years of age having three minor children, having sole income of family pension. The petitioner is having the qualification of Bachelor of Arts. The petitioner had made an application on 4.5.2000 in the prescribed format to the authorities claiming an appointment on compassionate ground. By communication dated 9.10.2001, the petitioner was informed that the application of the petitioner has been rejected by the Government on the ground that the monthly income of the petitioner is exceeding the prescribed limit. The petitioner is challenging the said decision of the Government before this Court by way of this petition.

Said order (Annexure "B" page 15) has been passed by the District Primary Education Officer, District Education Committee, Panchmahal, Godhra wherein it is mentioned that considering the letter from the Section Officer, Panchayat, Rural Housing and Rural Development Department, Sachivalaya, Gandhinagar bearing No. KRJ/102000-3413/Chh, the proposal has been rejected since the income has been exceeding the prescribed limit. Thus, the claim of the petitioner for appointment on compassionate ground has been rejected only on this ground.

Mr. Paresh Upadhyay, the learned advocate appearing for the petitioner has submitted that the petitioner is not having any other income except the income received by her from the family pension. This aspect has been made clear by the petitioner in the memo of petition and, therefore, he has relied upon three decisions of this Court wherein similar issue has been examined by this court to the effect that while considering an application for appointment on compassionate grounds, while taking into account the

income of the family, whatever income received by the widow by way of family pension has to be excluded. This aspect has been examined by this Court in special civil application no. 11020 of 1993 dated 1st February, 1999; special civil application no. 8802 of 2000 dated 6th August, 2001 and special civil application no. 4928 of 2001 dated 13th September, 2001. Relying upon the aforesaid three decisions of this Court, he has submitted that the respondents are required to be directed to reconsider the case of the petitioner in light of the observations made by this Court in aforesaid decisions that while considering an application for appointment on compassionate grounds, while taking into account the income of the family, whatever income received by the widow by way of family pension has to be excluded. He has, therefore, submitted that the respondents may be directed to exclude the income received by the widow towards her family pension while consider her claim for appointment on compassionate grounds.

Learned Asstt. G.P. Ms. Shraddha Trivedi appearing for the respondents has submitted that as per the view taken by this Court in aforesaid decisions, while considering an application for appointment on compassionate grounds, while taking into account the income of the family, whatever income received by the widow by way of family pension is required to be excluded and if some suitable directions are issued by this Court for reconsidering the case of the petitioner, then, the respondents will certainly consider the case of the petitioner for compassionate appointment while keeping in view the observations made by this Court in aforesaid decisions, within some reasonable period.

Considering the averments made in the memo of petition and also considering the submissions made by the learned advocates for the respective parties, order dated 9th October, 2001 (Annexure "B" page 15) is hereby quashed and set aside with a direction to the respondent authorities to reconsider the matter again for appointment on compassionate ground after considering the observations made by this Court in aforesaid three decisions and to consider the application of the petitioner for appointment on compassionate ground by excluding the family pension which is received by the widow and to pass appropriate order in accordance with law within two months from the date of receipt of writ of this Court. Petitioner is directed to send copy of the aforesaid three decisions to the concerned respondents within one week from the date of receipt of copy of this order. Rule is accordingly made absolute in terms

indicated hereinabove with no order as to costs. DSP.

12.12.2001. (H.K. Rathod,J.)

Vyas